
CHOICE OF PROVIDERS**16. CHOICE OF PROVIDERS**

This Section discusses choice of providers for Waiver recipients and and/or legal representatives.

16.1 Lead Agency Responsibilities

Individuals who receive CAP-MR/DD funding must be offered choice in the selection of Provider Agencies. Lead Agencies have the primary role of providing and/or insuring objective CAP-MR/DD Case Management Services to Waiver recipients. Lead Agencies must inform waiver recipients of their right to request case management services from an agency other than the Lead Agency. (See Appendix M for Guidelines for Contract Case Management Services.) Lead Agencies have the responsibility to develop a Provider network that meets the needs of wavier recipients.

Lead Agencies may not be the provider of direct services other than Case Management unless no other qualified provider is available. A lack of available providers is required to allow for service provision by the Lead Agency, and must be documented in the person's Plan of Care or attachment. Circumstances in which Lead Agencies may serve as direct service providers are:

- The Lead Agency can demonstrate that there are contractual arrangements, court approved treatment plans, property ownership obligations, or other material obligations that cannot be breached. These obligations must be of sufficient seriousness to justify the limiting of choice in a specific situation.
- The Lead Agency can demonstrate that all reasonable efforts to attract providers to the area have failed and there are no providers available to render the service.
- The Lead Agency can demonstrate that the person/legally responsible person has been provided with complete and non-biased information regarding the provider choice policy, that all the provider opportunities and options available to the person within the area have been reviewed with the person/legally responsible person, and the person/legally responsible person indicates that their desire is to retain the Lead Agency as the direct service provider.

Lead Agencies and agencies that provide contract case management services must establish or adopt policies to assure that all good faith effort are made to inform individuals of the full array of provider choices and that people are not steered into Lead Agency/Provider Agency owned, managed, affiliated, or related programs.

Under the circumstances defined above, a Lead Agency who is the provider of CAP-MR/DD funded services receives the monthly case management payment for that person and is also reimbursed as any other CAP-MR/DD provider for services provided to that person according to the rate structure established by DMA. Lead Agencies may not cross contract with other Lead Agencies or establish related party agencies at arms length from the Lead Agency in order to meet the

requirements of the provider choice procedures.

16.2 Provider Agency Responsibilities

A provider agency that is the contract provider of Case Management Services for a recipient may not also provide direct services to that person. Provider Agencies may not ask individuals or their legally responsible representatives to sign long term contracts, participation agreements or any other document that specifies any other condition of participation that is not in the Waiver or this manual that would restrict the person's right to choose a different provider agency.

16.3 Choice Issues for Recipients with Multiple Funding Sources

A Waiver recipient who is funded by CAP-MR/DD and other state funds for facility based services must select a single provider for services/supports in that facility. If there is a need for two Provider Agencies, the recipient's Plan of Care must clearly demonstrate the need for both State and Waiver funds. The recipient's Plan of Care or attachment must demonstrate the following:

- a clear explanation of the reason for the need for two or more Provider Agencies
- a plan for how the internal and external Provider Agencies will work together to meet the person's needs and assure the person's health and safety; and
- a plan for direct employee staff supervision while the provider agency direct service employee is working at the facility.

A recipient may receive services from two Provider Agencies in a facility if one or more of the following criteria are met:

- CAP-MR/DD Services are not provided by the agency providing services through state funds.
- The health and safety of the person are at risk without the use of two Provider Agencies.
- The provider agency billing State funds is unable to meet the needs of the person that are funded through CAP-MR/DD.
- The need for two Provider Agencies is clinically necessary to meet the person's needs.

State funds will not be allowed to be used in addition to CAP- MR/DD funding if one of the stated criteria does not exist. The person/legally responsible person may appeal the denial of the use of two funding sources by the Lead Agency. The Appeals Process in Section 25.10 is followed.

16.4 DMH/DD/SAS Responsibilities

DMH/DD/SAS will monitor the implementation of these procedures. DMH/DD/SAS reviews complaints by Waiver recipients, Provider Agencies, advocates, and others, and reports serious violations to DMA. DMH/DD/SAS may require that a Lead Agency submit a plan of correction for violations of the choice procedure. Continued violations of the choice policy will result in the removal of Lead Agency status.